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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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VICTOR ORELLANA,

Plaintiff,

v.

FRANK QUATTRO, et al.,

Defendants.

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Case No.[17-cv-05755-JSC](#)

**SCREENING ORDER REVIEWING
FIRST AMENDED COMPLAINT**

Re: Dkt. No. 13

Plaintiff Victor Orellana, proceeding pro se, brings this civil action against Defendants Frank Quattro, Jr. and Christina Quattro related to his enrollment at Moler Barber College. The Court now screens Plaintiff's first amended complaint pursuant to 28 U.S.C. § 1915 and concludes the complaint is deficient for the reasons set forth below.

FIRST AMENDED COMPLAINT ALLEGATIONS

Defendants Frank and Christina Quattro are the sole owners of Moler Barber College. (Dkt. No. 13 at 1.) Defendants claim that the college is a non-profit organization as well as a limited liability company. (*Id.*) Moler Barber College submits "fraudulent numbers" to the federal government in order to receive federal aid it does not qualify for. (*Id.*) The college received \$5,815 in grants and other funds which were undisclosed to Plaintiff. (*Id.*) The school failed to follow procedure by not offering Plaintiff all of the aid he was entitled to. (*Id.*)

The school has no business license. (*Id.*) As a result Plaintiff's school hours did not count toward "state certification." (*Id.*) Finally, the college catalog states that all schooling must occur in Oakland, however Plaintiff studied in San Pablo. (*Id.*)

PROCEDURAL HISTORY

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On October 5, 2017, Plaintiff filed his complaint and a motion for leave to proceed in

1 forma pauperis. (Dkt. Nos. 1, 2.) The Court granted Plaintiff's motion to proceed in forma
2 pauperis and concluded the complaint failed to survive 1915 review because the complaint did not
3 allege that Defendants violated Plaintiff's federal rights or facts sufficient to establish diversity
4 jurisdiction. (Dkt. No. 7.) The Court also instructed Plaintiff to submit an amended complaint by
5 December 22, 2017. (*Id.*)

6 On December 7, 2017, the Court received a letter from Plaintiff explaining that he is
7 currently incarcerated and defending criminal charges. (Dkt. No. 8.) For this reason Plaintiff
8 asked the Court to "push back" this case at least one year. (*Id.*) The Court denied Plaintiff's
9 request because Plaintiff had not shown good cause for continuing for one year the amendment of
10 his complaint to show that he has a viable claim and that this Court has subject matter jurisdiction
11 over this action. (Dkt. No. 9.) The Court advised Plaintiff that if he does not wish to prosecute
12 this action at this time he may dismiss it without prejudice. (*Id.*) The Court gave Plaintiff an
13 additional opportunity to amend his complaint with a new deadline of January 31, 2018. (*Id.*)

14 Plaintiff then submitted a second letter requesting "a longer extension" of at least an
15 additional two months to amend his complaint. (Dkt. No. 11.) He explained that it took 10 days
16 for him just to receive the Court's order and that he could not get access to the law library until
17 January 18, 2018. (*Id.*) The Court granted this request by extending the deadline to file an
18 amended complaint to March 30, 2018 and informed Plaintiff that no further extensions would be
19 granted. (*Id.*)

20 Plaintiff filed his first amended complaint on January 24, 2018. (Dkt. No. 13.) Plaintiff
21 requests that the Court allow Plaintiff more time to amend his complaint if the Court again
22 determines that the complaint allegations are insufficient. (*Id.* at 2) Plaintiff also requests the
23 Court "put this case off" until Plaintiff is released from county jail. (*Id.*)

24 **LEGAL STANDARD**

25 Under 28 U.S.C. § 1915, the Court has a continuing duty to dismiss any case in which a
26 party is proceeding in forma pauperis if the Court determines that the action is (1) frivolous or
27 malicious; (2) fails to state a claim on which relief may be granted; or (3) seeks monetary relief
28 against a defendant who is immune from such relief. A complaint is frivolous for Section 1915

1 purposes where there is no subject matter jurisdiction. *See Castillo v. Marshall*, 207 F.3d 15, 15
2 (9th Cir. 1997) (citation omitted); *see also Pratt v. Sumner*, 807 F.2d 817, 819 (9th Cir. 19987)
3 (recognizing the general proposition that a complaint should be dismissed as frivolous
4 on Section 1915 review where subject matter jurisdiction is lacking).

5 Regarding dismissals for failure to state a claim, Section 1915(e)(2) parallels the language
6 of Federal Rules of Civil Procedure 12(b)(6). *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir.
7 2000). The complaint therefore must allege facts that plausibly establish the defendant's
8 liability. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-57 (2007). When the complaint has
9 been filed by a pro se plaintiff, as is the case here, courts must "construe the pleadings liberally ...
10 to afford the petitioner the benefit of any doubt." *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir.
11 2010)(citations omitted). Upon dismissal, pro se plaintiffs proceeding in forma pauperis must be
12 given leave to "amend their complaint unless it is absolutely clear that the deficiencies of the
13 complaint could not be cured by amendment." *Franklin v. Murphy*, 745 F.2d 1221, 1235 n.9 (9th
14 Cir. 1984) (internal citations and quotation marks omitted); *Lopez v. Smith*, 203 F.3d 1122, 1130-
15 31 (9th Cir. 2000).

16 DISCUSSION

17 There are two bases for federal subject matter jurisdiction: (1) federal question jurisdiction
18 under 28 U.S.C. § 1331 and (2) diversity jurisdiction under 28 U.S.C. § 1332. For the Court to
19 have federal question jurisdiction, the complaint must state a claim that arises under federal law.
20 28 U.S.C. § 1331. A cause of action "arises under federal law only when the plaintiff's well
21 pleaded complaint raises issues of federal law." *Hansen v. Blue Cross of Cal.*, 891 F.2d 1384,
22 1386 (9th Cir. 1989).

23 Plaintiff has not cured the defects the Court identified in its previous order. (See Dkt. No.
24 7.) First, the complaint does not demonstrate a basis for federal question jurisdiction. As the
25 Court previously explained, Plaintiff appears to allege only state law claims including breach of
26 contract, fraud, and theft. (Dkt. No. 13 at 1.) Plaintiff claims Defendants committed "federal
27 fraud," this time based on the allegation that Moler Barber College "submits fraudulent numbers
28 to receive federal aid it does not qualify for." However, Plaintiff has not identified a federal

1 statute or right that Defendants violated that would give rise to a claim under federal law.
2 Therefore, the complaint allegations are insufficient to establish federal question jurisdiction.

3 Second, the complaint does not allege a basis for diversity jurisdiction. To properly allege
4 diversity jurisdiction, a plaintiff must claim damages in excess of \$75,000. 28 U.S.C. § 1332(a).
5 In addition, “diversity jurisdiction requires complete diversity between the parties—each
6 defendant must be a citizen of a different state from each plaintiff.” *Diaz v. Davis (In re Digimarc*
7 *Corp. Derivative Litig.)*, 549 F.3d 1223, 1234 (9th Cir. 2008). Plaintiff states that Defendants are
8 owners of Moler Barber College in San Pablo and Oakland California. While the college is
9 located in California it is not clear whether Defendants Frank and Christina Quattro are citizens of
10 California, nor has Plaintiff included any allegations regarding his own citizenship. Further,
11 Plaintiff has failed to demand an amount of damages greater than the jurisdictional minimum.

12 Accordingly, the Court concludes the complaint does not demonstrate a basis for federal
13 jurisdiction because the complaint does not allege that Defendants violated Plaintiff’s federal
14 rights nor does it allege facts sufficient to establish diversity jurisdiction, and therefore is
15 insufficient to pass Section 1915 review.

16 CONCLUSION

17 For the reasons stated above, Plaintiff’s complaint allegations are insufficient. Plaintiff
18 must clearly provide the legal and factual basis for his claims as well as this federal court’s
19 jurisdiction to hear the claims. Any amended complaint must be filed by March 1, 2018.

20 If Plaintiff would like to pursue his case after he is released from county jail Plaintiff may
21 voluntarily dismiss this matter without prejudice and refile the case at a later time.

22 The Court again encourages Plaintiff to refer to the Handbook for Pro Se Litigants, which
23 is available along with further information for the parties on the Court’s website located at
24 <http://cand.uscourts.gov/proselitigants>. Plaintiff may also contact the Legal Help Center, 450
25 Golden Gate Avenue, 15th Floor, Room 2796, Telephone No. (415)-782-8982, for free assistance
26 regarding his claims.

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28 **IT IS SO ORDERED.**

United States District Court
Northern District of California

1 Dated: February 1, 2018
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JACQUELINE SCOTT CORLEY
United States Magistrate Judge